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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
A Proposal for Revising the MDS)
and ITFS Regulatory Regime)
) DA 02-2732
Filed by Wireless Communications) RM- 10586
Association International, the National)
ITFS Association and the Catholic)
Television Network)

COMMENTS OF LEACO RURAL TELEPHONE COOPERATIVE, INC.

Leaco Rural Telephone Cooperative, Inc. ("Leaco"), by its attorneys, hereby respectfully submits its comments in the above-captioned proceeding in response to the Federal Communications Commission ("FCC" or "Commission") *Public Notice* released October 17, 2002 (DA 02-2732).¹ While Leaco generally supports the proposals set out in a White Paper prepared by the Wireless Communications Association, International ("WCA"), the National ITFS Association and the Catholic Television Network (collectively, "Petitioners"): Leaco urges the Commission not to adopt any new rules, procedures or policies that may jeopardize or cause harmful interference to existing video systems currently providing service to rural areas through the use of Multipoint Distribution Service ("MDS") or Instructional Television Fixed Service ("ITFS") licenses in the 2.1 and 2.5 GHz spectrum bands. Such systems are still providing much-needed service to rural subscribers, many of whom would not otherwise have access to

¹ *Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules*, RM-10568, Public Notice, DA 02-2732 (October 17, 2002) ("Public Notice").

² "A PROPOSAL FOR REVISING THE MDS AND ITFS REGULATORY REGIME," WHITE PAPER, prepared by WCA, The National ITFS Association and the Catholic Television Network (October 7, 2002) ("White Paper").

local over-the-air network broadcasts, cable news outlets, and educational and public interest programming without “wireless cable” service, and the Commission should not force these rural licensees to abandon their systems because of the adoption of a new bandplan or a new set of service rules. Accordingly, Leaco requests that such systems currently providing video services to rural schools, homes and businesses, if requested by the operator, remain protected from any transition to a new band plan and from harmful co-channel and adjacent channel interference which may be caused by any new regulatory scheme adopted by the Commission.

I. Statement of Interest

Leaco, a rural telephone cooperative that serves remote rural regions of eastern New Mexico and western Texas is also an MDS authorization-holder and ITFS lessee of facilities in Hobbs, New Mexico and Seminole, Texas. Through its “wireless cable” system, Leaco currently provides service to approximately **2,537** customers in rural New Mexico and Texas, many of whom would not be able to receive local over-the-air network broadcasts, including local news and weather information, without such video service.

II. Comments

A. Leaco Generally Supports the Proposals Set Out in the White Paper

As a general matter, Leaco supports many of the visionary proposals set out by the Petitioners in the White Paper. Specifically, Leaco, like the Petitioners, urges the FCC to move quickly to eliminate unnecessary **and** outdated **rules** and filing requirements, which for years have burdened MDS licensees both financially and administratively. Leaco also supports the

Petitioners' proposals for a major overhaul of the MDS and ITFS rules to allow licensees greater flexibility in constructing and operating low power cellular-style systems. Leaco agrees with the Petitioners that adopting rules similar to those already enacted for licenses in the Local Multipoint Distribution Service ("LMDS"), 39 GHz Service and 700 MHz Band, along with a re-evaluation of existing interference and service area requirements, would give MDS licensees the flexibility needed to deploy broadband fixed and mobile wireless systems in the 2.1 and 2.5 GHz spectrum bands that actually work. An overhaul of the MDS and ITFS regulatory landscape is much overdue, and Leaco applauds the efforts of the Petitioners in bringing this carefully-crafted proposal to the Commission's attention.

B. The FCC Should Not Adopt New Rules that May Threaten the Transmission of Wireless Video Services to Rural America

While the White Paper is an admirable attempt by major licensees to overhaul the Commission's out-dated rules and to help facilitate the rollout of broadband services, the adoption of the proposed bandplan and service rules will effectively sound the death knell for the provision of video services via the MDS and ITFS bands. Transition to the proposed bandplan will unduly impact rural subscribers who receive their video through wireless cable. Although it is clear from the current state of the MDS industry³ that in major urban markets, the future success of the MDS and ITFS bands depends on the successful deployment of broadband services, in rural areas, MDS and ITFS still have an important role to play in the delivery of

³ The FCC's 2001 Video Competition Report estimated that there are approximately 700,000 MDS and ITFS subscribers, many of which are receiving only broadband services, nationwide. *See*, In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Eighth Report and Order, CS Docket No. 01-129, rel. January 14, 2002. See also, White Paper, Section I.

multichannel video. Accordingly, although Leaco is planning to utilize some of its MDS and ITFS spectrum for the provision of advanced wireless services in rural areas, it should not be forced to surrender its existing video service, as would likely be the case under the Petitioners' proposed regime.

i. MDS and ITFS licenses are ideally suited for the provision of video services in rural markets.

Leaco has been successful with its delivery of video services utilizing the 2.1 and 2.5 GHz MDS and ITFS bands because of technological and financial factors which are unique to rural and underserved areas. The use of wireless technology for video delivery remains the only affordable way for rural licensees such as Leaco to provide multichannel video services to businesses and residences in remote and underserved areas in rural New Mexico and Texas. Although a wireless cable system has a significantly limited channel capacity when compared to that of a traditional wired cable system, the cost of deploying wired cable systems to Leaco's existing wireless cable customers is still extremely prohibitive.

Additionally, when compared to other wireless services, the propagation characteristics of the MDS and ITFS bands make them ideally suited for deployment of video services in rural areas. MDS and ITFS signals can extend up to 50 miles from a single high-powered transmitter, compared to a 1 or 2 mile range for similar fixed wireless services such as LMDS and 39 GHz Service. Furthermore, for many rural carriers, such "substitute" wireless services are very difficult to acquire at auction, as rural providers are often forced to compete against larger carriers for new wireless licenses in extremely large service areas. Should a rural carrier actually be able to acquire additional wireless licenses at auction or in the secondary market, the build-out

costs and deployment of such services, which normally are in spectrum bands higher than 2.5 GHz, also serve as an obstacle in a rural environment. For these reasons, Leaco's wireless cable system, through its licensed MDS and leased ITFS licenses, has remained the company's only viable option for providing critical over-the-air broadcasts, news, weather and educational information to businesses, residences and educational institutions in rural New Mexico and Texas. Leaco's customers would not otherwise be able to receive such local broadcasts from comparable cable or satellite systems that may provide service in adjacent markets.

ii. As proposed, the Petitioners' plan could substantially eliminate the provision of rural video services

In its White Paper, the Petitioners state that one of their objectives is to "assure that the adverse impact on operators of substantial wireless cable systems is mitigated" by the industry-wide transition to a newly-proposed MDS and ITFS channelization and band plan.⁴ The Petitioners propose certain policies to mitigate this adverse impact. Specifically, the Petitioners propose an "MVPD Opt-Out," in which a wireless cable video operator would be exempted from transitioning to a new band plan if the operator certifies to the FCC that it is providing service to five percent of all households within its geographic service area. It will not be easy for rural providers to meet the proposed five percent "opt-out" because most of their customers are scattered throughout large, rural service areas. For Leaco, an operator with approximately 2,537 rural subscribers, meeting the Petitioners' arbitrary five percent threshold would be difficult, if not impossible.⁵

⁴White Paper, Appendix B p. 16.

⁵ While Leaco's current video service extends to approximately five percent or less of all households in its existing service areas, Leaco plans to meet its two-thirds population buildout requirement through a combination of video services in rural areas and broadband "two-way"

If the FCC adopts the White Paper proposal, “neighboring” licensees up to 150 miles away could force Leaco and other wireless video providers who may not currently provide service to more than **five** percent of the households in their existing service areas (incumbent protected service areas or BTA boundaries) into the new bandplan. Such forced transition to the new bandplan would slash the number of Leaco’s usable video channels from **33** (thirteen licensed and leased MDS channels and twenty leased ITFS channels) to seven, located in the Petitioners’ proposed “middle band,” thus effectively ending Leaco’s ability to provide meaningful wireless cable services.⁶ In fact, the Petitioners’ proposal, if adopted without modification, would likely sound the death h e l l for most rural wireless cable operators.

In its White Paper, the Petitioners also note that an entity not meeting the arbitrary five percent penetration criteria “should be afforded ample time during the transition to make the necessary adjustments in its operations . . . to comply with the rules. . . or to utilize other technologies to accommodate its subscribers.”” Because, as discussed above, no other affordable technology currently exists to replace video MDS and ITFS service in rural areas, and because such system adjustments may be cost prohibitive to rural providers and their customers, the Petitioners’ “MVPD Opt-Out” does not provide adequate protection to existing video operators in rural areas.

services in more populated cites and towns within its BTA. The Commission should allow Leaco and the marketplace the flexibility to determine to best combination of services to meet the construction benchmark.

⁶ While the Petitioners’ also point out that its 5 percent “Opt-Out” proposal is only one-third of the 15 percent penetration figure that is used to establish whether an MDS-based MVPD is effective competition to a cable television system, such a standard should not be imposed in a proposal that would dramatically reallocate a traditionally video-based service in which many carriers, including Leaco, are still providing valuable, low-cost programming to rural residences, schools and businesses.

’White Paper, Appendix B at **17**, FN 45.

In lieu of a strict five percent “opt-out” threshold, Leaco suggests that the Commission consider grandfathering of deployed wireless cable systems that do not meet the five (5) percent threshold on a case-by-case basis for those existing wireless cable operators seeking to be exempt from a new bandplan and service rules.’ Such an individual, case-by-case determination made by the Commission will help ensure that rural providers such as Leaco will not face a substantial loss of critical video services to its customers should a nearby major market operator wish to deploy broadband services under a new regulatory regime. Applications to “opt-out” should be made to the Commission at only one time—sixty days prior to the date the new service rules go into effect, and such requests should only be made by existing wireless cable operators with *deployed* wireless cable systems. These operators would have the burden of providing all information necessary to help the Commission make a determination as to the nature of the existing video system and neighboring licensees should be given an opportunity to comment on such applications.

While most MDS and ITFS operators have cooperated for years to ensure the deployment of adjacent systems, others have used their licenses for the sole purpose of obstruction and greenmail. A case-by-case determination by the Commission of existing video operators that wish to continue under the existing regime will allow the FCC to protect viable video operators committed to continuing to provide service, while rooting out those licensees simply interested in obstruction and monetary gain.

In any event, the Commission should be aware that a strict five percent benchmark, as suggested by the Petitioners, would effectively end the transmission of video services in many rural areas, including and especially, in rural New Mexico and Texas. Were an adjacent operator

⁸ Leaco concurs that those systems that do satisfy the five percent benchmark should automatically be exempt upon the operator’s request.

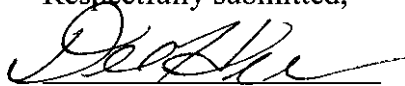
to force Leaco to migrate to a new bandplan, Leaco would lose almost three-quarters of its existing channel capacity, thus denying its rural subscribers and schools access to important local broadcasts.

111. Conclusion

While Leaco believes that the Petitioners' White Paper is a positive and much-needed step in the right direction to bring the MDS and ITFS industry into the 21st century, Leaco reminds the FCC that it must continue to adequately protect the vital interests of rural video operators that are providing critical, unduplicated services in rural America. Leaco respectfully asks that in the Commission's review and overhaul of existing MDS rules and policies, the Commission not adopt new rules, including rules proposed by the Petitioners, that would force existing video operators into a bandplan that would effectively end the provision of such critical services to rural America.

While Leaco agrees with the Petitioners that the future of the MDS and ITFS industry lies in broadband data, it is not yet time to abandon all video applications within these bands.

Respectfully submitted,



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